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RUEHKM/AMEMBASSY KAMPALA 2761  
RUEHNR/AMEMBASSY NAIROBI 5189  
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C O N F I D E N T I A L SECTION 01 OF 03 HARARE 000072

SIPDIS

AF/S FOR B. WALCH  
DRL FOR N. WILETT  
ADDIS ABABA FOR USAU  
ADDIS ABABA FOR ACSS  
STATE PASS TO USAID FOR E. LOKEN AND L. DOBBINS

E.O. 12958: DECL: 01/29/2019  
TAGS: [ECON](#) [EAGR](#) [ASEC](#) [PHUM](#) [ZI](#)  
SUBJECT: FARM SEIZURES CONTINUE: SADC RULING AND BIPPAS  
PROVIDE NO PROTECTION

Classified By: Ambassador James D. McGee for reason 1.4 (d)

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SUMMARY  
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11. (C) In mid-January, the president of the Commercial Farmer's Union told us that the Zimbabwean government was continuing to promote its land seizure and redistribution program by evicting commercial farmers and handing their farms over to loyal regime officials. Land reform was a topic of conversation at the ZANU-PF annual conference in December 2008; however, discussion of granting several hundred commercial farmers long-term leases does not appear to be sincere. The November 2008 SADC Tribunal ruling that the Land Reform Program violates Zimbabwe's SADC treaty obligations has been dismissed by the government. Bilateral Investment Promotion and Protection Agreements (BIPPA) have not provided any protection to foreign-owned farms either, as evicted Dutch farmers are still awaiting a compensatory ruling by the International Court of Arbitration, while the Zimbabwean High Court has dismissed a Danish farmer's claim for protection under a BIPPA between Denmark and Zimbabwe.  
END SUMMARY.

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Commercial Farm Invasions Continue  
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12. (C) On January 20, poloff met with the president of the Commercial Farmer's Union (CFU), Trevor Gifford, who discussed the status of the remaining large-scale commercial farmers in Zimbabwe. According to Gifford, the majority of these commercial farmers are facing continued harassment, eviction notices, and illegal land invasions by members of the army, police and government. The CFU, which tracks disturbances on farms owned by its members, reported that in January alone there were 23 incidents ranging from seizures of crops, equipment and livestock, to physical attacks on the owners or farm employees. There are currently 50 farmers who are facing prosecution by the government for refusing to

leave properties they were ordered to vacate by authority of the Zimbabwe Land Reform Program.

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Offer Letters to Commercial Farmers Disingenuous  
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13. (C) At the recently concluded ZANU-PF annual conference in December, the land reform program was discussed and a document released stating that of the 15.5 million hectares that were originally owned by large-scale commercial farms, 12.3 million hectares have been redistributed since 2000. The paper also claimed that 341 white farmers had been identified to be allowed to continue farming. These farmers would be given offer letters entitling them to lease the land for an unspecified time period. Gifford quickly dismissed the offer-letter claim and explained that it was a marketing effort by the GOZ to make it appear as if the land reform program was not racially based. He said that neither the CFU nor CFU members had ever been informed of who these farmers were, and no offer letters had ever been issued. He also mentioned that this claim had been circulated over a year ago, and no action had come of it at that time.

14. (C) Gifford did say that approximately two years ago 16 white commercial farmers had received 99-year leases from the government. These farmers were all closely connected to the regime.

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HARARE 00000072 002 OF 003

GOZ Intends to Ignore SADC Tribunal Land Ruling  
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15. (C) Following the SADC Tribunal ruling on November 28, 2008 that the Land Reform Program was racially discriminatory and violated Zimbabwe's SADC treaty obligations with regard to upholding the rule of law and respect for human rights, senior GOZ officials indicated that the GOZ would not respect the judgment. For example, Didymus Mutasa, the Minister of State Security and one of the architects of Zimbabwe's land reform program, described the Tribunal as "daydreaming." Gifford told us that farm invasions on properties covered by the Tribunal ruling have continued.

16. (C) Another indication of the GOZ's intent to ignore the Tribunal ruling was the dismissal of then acting attorney general Barat Patel by President Mugabe and the subsequent replacement of him with Johannes Tomana. A local independent newspaper reported that Patel had advised the government that it should abide by the SADC ruling. Gifford told us that Tomana was a strong supporter of the land reform program and had himself forcibly evicted Kestrel Bezuidenhout, an elderly white farmer, from his farm in the Makonde district of Mashonaland East. (Bezuidenhout did not contest the eviction legally out of concern for his own safety.)

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Zimbabwe Also Contesting Bilateral Agreements  
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Dutch Farmers Still Awaiting Arbitration Ruling...

17. (C) Boyd Carr, a Harare lawyer representing 12 Dutch farmers who were evicted from their farms by the government, spoke with poloff on January 26 about the legal status of their class action case before the International Court of Arbitration. The farmers are alleging a violation of the Bilateral Investment Promotion and Protection Agreement (BIPPA) between Zimbabwe and the Netherlands.

18. (C) According to Carr, on October 31, 2007, before a three-judge panel, the GOZ conceded that seizures of farms owned by Dutch citizens\*which began in 2000\*were in violation of the BIPPA. Following this concession, the

Tribunal, consisting of an American judge chosen by the Dutch farmers, a Pakistani judge chosen by the GOZ, and a French judge agreed upon by both parties, was charged with assessing compensation. The Tribunal has been in existence for 15 months and has still not rendered a compensatory verdict. Carr cited the Pakistani judge as the cause of the delay and mentioned that\*despite the ICA's reputation overall as an expedient body\*he has a history of delaying judgments. Carr explained that the Dutch plaintiffs had submitted a valuation of the farms summing approximately 25 million Euros, while the GOZ had valued the properties at only 300,000 Euros.

¶9. (C) According to Carr (and confirmed by the ICA website), should the Tribunal render a final verdict, it would be enforceable under the terms of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This Convention would allow the plaintiffs to legally petition to claim assets owned by the Zimbabwean government and located overseas, as compensation derived from the arbitration settlement. Such a petition would be enforceable in the 156 countries that are signatory to the convention. However, Carr felt identifying overseas GOZ assets would be challenging. Many of Zimbabwe's most visible foreign assets, such as Air Zimbabwe aircraft, are in fact the property of partly-privatized entities and therefore would not be seizable.

HARARE 00000072 003 OF 003

...While Danish BIPPA Disregarded by High Court

¶10. (SBU) On November 27, 2008, the Zimbabwean High Court dismissed a Danish lawsuit against the government seeking protection of property rights under the signed BIPPA between the governments of Denmark and Zimbabwe. The lawsuit was brought by Danish farmer Kim Bikertoft, former owner of Nyahondo Farm in Chinhoyi, who challenged the acquisition of his farm by retired brigadier general Walter Tapfumaneyi. At the time of the ruling, the High Court gave no explanation for the dismissal of the suit.

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COMMENT  
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¶11. (C) The Zimbabwean government's program of systematically seizing land from commercial farmers\*of both Zimbabwean and foreign origin\*and redistributing it to government-identified "indigenous" Zimbabweans continues unabated. In practice, the distribution rewards loyalty of senior officials from government, the military, and the police. Government officials and High Court judges have made clear that neither calls to respect property rights by SADC neighbors, nor the BIPPAs that Zimbabwe voluntarily signed, would undermine this long-standing pillar of the Mugabe patronage system. END COMMENT.

MCCEE